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TESLA, INC. DBA TESLA MOTORS, INC.
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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 DEMETRIC DI-AZ, OWEN DIAZ AND
LAMAR PATTERSON

16 Plaintiffs,

17 v.

18 TESLA, INC. DBA TESLA MOTORS,
19 INC., CITISTAFF SOLUTIONS, INC.;
WEST VALLEY STAFFING GROUP;
20 CHARTWELL STAFFING SERVICES,
INC.; NEXTSOURCE, INC.; and
21 DOES 1-10, inclusive

22 Defendants.
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Case No. 3:17-cv-06748-WHO

**DECLARATION OF ATHINA MARTINEZ IN
SUPPORT OF TESLA INC.'S REQUEST TO
RETAIN CONFIDENTIALITY OF
DOCUMENTS**

*[Filed concurrently with the Defendants' Joint
Request to Retain Confidentiality of Documents]*

Complaint Filed: October 16, 2017
Trial Date: May 11, 2020

DECLARATION OF ATHINA MARTINEZ

I, Athina Martinez, declare as follows:

1. I have personal knowledge of the matters set forth herein and I could and would testify competently thereto, if called upon to do so.

2. I am currently a Senior Group Manager Global Supply Chain at Tesla, Inc. (“Tesla”). I have worked for Tesla for the last four years, including three years in Tesla’s Global Supply Management department, and I was promoted to my current position in 2019. As a Senior Group Manager at Tesla, my job duties include identifying vendors, negotiating with vendors, negotiating contract terms with vendors, and assisting in making determinations about the vendors with whom Tesla will enter into contracts. I am also responsible for negotiating contract terms with new vendors, revising contract terms with existing vendors and assisting in the determination of whether or not certain contracts should be renewed or terminated. I carry out these functions with a wide variety of vendors, from vendors who supply forklifts to vendors who provide labor resources and services. I currently work at the Tesla 901 Page Building, which is located at 901 Page Avenue, Fremont, California, 94538.

3. I am familiar with and have reviewed the documents Bates stamped TESLA-0001014 through TESLA-0001050, which consist of the Master Services Agreement (“the MSA”) entered into by Tesla and nextSource, Inc. (“nextSource”), which is Bates stamped TESLA-0001014 through TESLA-0001039 and contains Schedule A, Schedule B, Annex 1, Annex 2 and Annex 3; Amendment No. 1 to the Master Services Agreement, which is Bates stamped TESLA-0001040 through TESLA-0001042; Amendment No. 2 to the Master Services Agreement, which is Bates stamped TESLA-0001043 through TESLA-0001044; Amendment No. 3 to the Master Services Agreement, which is Bates stamped TESLA-0001045 through TESLA-0001046; and the Non-Disclosure Agreement between Tesla and nextSource relating to the Master Services Agreement and its amendments, which is Bates stamped TESLA-0001047 to TESLA-0001050. I am informed and on that basis believe that the documents Bates stamped TESLA-0001014 through TESLA-0001050 were submitted by Plaintiffs in support of Plaintiffs’ Opposition to

1 nextSource's summary judgment motion as Exhibit D to the Declaration of Larry Organ (Dkt. No.
2 124).

3 4. In the course of my work at Tesla, I have been involved in the negotiation and
4 implementation of contracts similar to the MSA to provide temporary labor and services, and have
5 also been involved in negotiating amendments to contracts similar to the MSA. Due to my work
6 on these similar contracts as well as my work on all other contracts which I have negotiated on
7 behalf of Tesla, I am familiar with contract terms and provisions which contain confidential
8 business information, confidential financial information and sensitive competitive business
9 information. These terms and provisions are closely negotiated with vendors. Tesla considers
10 these terms and provisions to be confidential business information unique to that vendor and
11 which Tesla does not share with other vendors or the general public. Tesla requires all of its
12 personnel to sign non-disclosure agreements which require them to maintain the confidentiality of
13 such information. Tesla has workplace procedures that restrict access to its vendor contracts, and
14 access to the contracts is evaluated and permitted for Tesla personnel on a need-to-know basis.
15 Access to the database in which vendor contracts are stored is limited to Tesla personnel whose
16 access has been approved by Tesla management. In general, most Tesla personnel who have a
17 valid business need to access vendor contracts request them from Tesla's Global Supply
18 Management department or Tesla's Legal department.

19 5. To further ensure the confidentiality of these types of information, for the MSA and
20 contracts similar to the MSA, Tesla requires the vendor to enter into a Non-Disclosure Agreement
21 (as was done with nextSource) to protect the confidentiality of the business relationship and the
22 terms of the contract or the MSA. The Non-Disclosure Agreement requires Tesla and the vendor
23 to keep confidential the information is disclosed only for the purpose of considering a potential
24 business relationship and if any business relationship is formed, then it also covers the business
25 relationship, as set forth in TESLA-0001047, Paragraph 2 of the Non-Disclosure Agreement.

26 6. In a contract negotiation, each party seeks to obtain the best terms at the lowest cost
27 or investment of resources. In negotiations with new vendors, each party will typically have
28 limited information about the terms and pricing which would be acceptable to the other party. If

1 different vendors providing similar services had access to or knowledge of the MSA terms, Tesla
2 would be harmed because other vendors of similar services would have an unfair advantage of
3 knowing the terms which Tesla agreed to with another vendor, and it would remove the
4 competitive process from contract negotiation. It would also affect Tesla's existing contracts
5 because those vendors would potentially attempt to re-negotiate the terms of their contracts and, if
6 that was not successful, would have an unfair competitive advantage at the time the contract was
7 up for renewal and/or it expired. The Non-Disclosure Agreement keeps the playing field level
8 among Tesla, the vendor, and the vendor's competitors by keeping such information confidential
9 and out of the public domain. It also ensures that there is competition among similar vendors who
10 may seek to enter into a business relationship with Tesla. The Non-Disclosure Agreement also
11 helps Tesla keep information about its business activities out of the public view. Tesla takes many
12 precautions to maintain confidentiality and prevent public disclosure about many of its business
13 plans. Tesla receives close attention from the public and the media, public disclosure of small
14 details about Tesla's operations can receive outsized attention from the public and the news media,
15 and that attention could harm Tesla more than disclosure of such details might harm other
16 companies. Publication of details such as which vendors Tesla does business with, what services
17 those vendors provide, and the locations where such services are provided can receive outsized
18 public attention and can reveal information about Tesla's business plans which Tesla had
19 otherwise kept as confidential.

20 7. The terms and provisions in the MSA that contain confidential business
21 information, confidential financial information and sensitive competitive business information and
22 should not be made available to the general public or other vendors can generally be categorized
23 as: pricing; payment; the types, scope, volume, and locations of services provided; assignment of
24 liability; intellectual property and confidential information; and evaluation of services provided;
25 and termination.

26 8. Pricing and payment terms are contained in the MSA and its amendments are the
27 following: TESLA-0001017 (Section 4.2 (b)-(d), Section 4.3(a)-(b), Section 4.4(a)); TESLA-
28 0001018 (Section 4.4(a)-(d)); TESLA-0001023 (Section 12.2); TESLA-0001026 - TESLA-

1 0001027 (Section 14.13(l); TESLA-0001030 - TESLA-0001031 (Section 3); TESLA-0001041
 2 (Section 4); TESLA-0001042 (Section 5); TESLA-0001043 (Section 1); and TESLA-0001045 –
 3 TESLA-0001046 (Section 1). Pricing information and payment terms are critical for the MSA and
 4 for each contract similar to the MSA. They are typically the most heavily negotiated terms,
 5 because price and payment terms are objective and allow each party to directly assess its cost and
 6 benefit under the contract.

7 9. Terms and provisions regarding each party's responsibility for providing resources
 8 and relating to the types, scope, volume, and locations of services to be provided are contained in
 9 the MSA, its amendments and the Non-Disclosure Agreement are the following: TESLA-
 10 0001014 (Section 1.1); TESLA-0001015 (Sections 2.3 and 2.4); TESLA-0001016 (Section 3.1(c),
 11 Section 3.2, Section 3.3, Section 3.4); TESLA-0001018 (Section 5.2, Section 5.3(a)); TESLA-
 12 0001019 (Section 5.3(b)); TESLA-0001029–34 (work order); TESLA-0001040 (Section 1); and
 13 TESLA-0001041 and TESLA-0001043 and TESLA-0001045 (categories, position types, and
 14 position descriptions). These terms and provisions also affect costs to each party under the MSA
 15 or a contract similar to the MSA. These are also key contract terms because they involve each
 16 party assessing its cost or cost savings with respect to how responsibility for a particular resource
 17 is allocated – what it will cost a party to provide the resource or what costs will be saved if a party
 18 does not have to provide the resource. This again is part of a party's evaluation of its potential
 19 costs and benefits under the contract.

20 10. Terms and provisions relating to liability are contained in the MSA and its
 21 amendments are the following: TESLA-0001022 (Section 11.1, 11.3.11.4); TESLA-0001023
 22 (Section 11.4, Section 12.1(a)-(d)); TESLA-0001027 (Section 14.13(p)); and TESLA-0001048
 23 (14). The allocation of liability is also related to a party's costs or payments under the MSA or a
 24 similar contract, but it is an indirect cost. It is nevertheless critical in negotiations because it
 25 represents a future potential cost or savings to a party.

26 11. Terms and provisions relating to intellectual property and confidential information
 27 are contained in the MSA, its amendments and the Non-Disclosure Agreement are the following:
 28 TESLA-0001019 (Section 6.2, Section 7.1, Section 7.2, Section 7.3); TESLA-0001020 (Section

1 7.4); TESLA-0001022 (Section 11.2); TESLA-0001047 (Section 1, Section 4); and TESLA-
2 0001048 (Section 9). Tesla's intellectual property and confidential information are an important
3 company asset and critical to its operation, and whether a vendor is permitted access to such
4 information and any terms on access, Tesla considers confidential because it affects the vendor's
5 performance and costs under the contract.

6 12. Terms and provisions relating to the evaluation of services provided under the
7 contract are contained in the MSA and its amendments are the following: TESLA-0001015
8 (Section 2.4, Section 2.7, Section 2.8); and TESLA-0001016 (Section 2.8). These terms affect the
9 ultimate cost and benefit to each party, as they potentially also impact the term of the contract and
10 are confidential because they are also part of the overall cost and benefit of the contract.

11 13. Terms and provisions relating to termination are contained in the MSA, its
12 amendments and the Non-Disclosure Agreement are the following: TESLA-0001020 (Section
13 8.2, Section 8.3, Section 8.4, Section 8.5); TESLA-0001021 (Section 8.5); and TESLA-0001048
14 (Section 13). Because these terms determine the potential duration of the contract, they also relate
15 to the party's ultimate cost and benefit under the contract. Termination rights also affect the
16 parties' rights in the event of performance failures, so disclosure of such terms that Tesla
17 negotiated with one vendor will affect Tesla's ability to negotiate favorable termination rights with
18 other vendors.

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct.

21 Executed this 16th day of January 2020, at Fremont, California.

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Athina Martinez